

**OFFICE OF THE PROSECUTOR OF LUCAS COUNTY**

**OPINION NO. 01-04**

April 4, 2001

Lucas County Board Of Commissioners  
One Government Center, Suite 800  
Toledo, Ohio 43604-2259

**SYLLABUS**

1. The Lucas County Regional Health District's proposed smoking ban cannot be placed before the electorate prior to enactment by the Board of Health because Lucas County is without authority to conduct an advisory election.
2. The Lucas County Regional Health District's proposed smoking ban is not subject to referendum once it becomes a regulation because the right of referendum is strictly statutory and there is no statute authorizing the conduct of a referendum of a health district regulation.

**OPINION**

I am responding to your request for an opinion regarding the placement of the proposed smoking ban before the electorate, either prior to becoming, or after it has already become, a regulation, pursuant to R.C. 3709.21. Specifically, there are two methods by which a proposed or already implemented regulation can come before the electorate: either through an advisory election when an issue is in the proposal stage or by referendum once the regulation is passed. It is my opinion that neither of these procedures may be used for a regulation issued by the Lucas County Regional Health District.

In *Bedford v. Board of Elections of Cuyahoga County* (1991), 62 Ohio St. 3d 17, the Ohio Supreme Court held that advisory elections may be held by cities and villages because section 8, Article XVIII of the Ohio Constitution grants to Ohio's municipalities home rule powers, which include the authority to hold "advisory elections." By contrast, there is no provision of the Ohio Constitution which grants such authority to other political subdivisions of Ohio, such as counties or health districts. Nor is there any statutory authority for conducting such an advisory election by county commissioners or boards of health. Accordingly, there may be no

advisory election on the issue of a proposed smoking ban.

The right to referendum is conferred by the Ohio Constitution and statutes enacted thereunder. Referendum petitions are permitted for submitting additional county tax resolutions to the electorate. R.C. 305.31 allows a referendum election when a resolution is passed or rule is adopted by the board of county commissioners. There is no provision for a referendum when the resolution is passed by a county health district. The only provision for any voting procedure for a county health district is in R.C. 3709.29. This section of the Ohio Revised Code states that if a health district needs additional monies to operate, it should certify the fact of an insufficiency to the board of county commissioners, who may then proceed to place a special levy on the ballot for additional funds.

Absent an express statute conferring on a health district the authority to have an advisory election or conferring on the electorate the authority to compel a referendum on a regulation of a county health district, there is no authority allowing either of these procedures.

Therefore, it is my opinion and you are hereby advised:

1. The Lucas County Regional Health District's proposed smoking ban cannot be placed before the electorate prior to enactment by the Board of Health because Lucas County is without authority to conduct an advisory election.
2. The Lucas County Regional Health District's proposed smoking ban is not subject to referendum once it becomes a regulation because the right of referendum is strictly statutory and there is no statute authorizing the conduct of a referendum of a health district regulation.

Sincerely,

JULIA R. BATES  
PROSECUTING ATTORNEY

JRB/lmk